IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 93 of 2002
with
Second Appeal Nos. 94 and 95 of 2002
with
Civil Application Nos.5295, 5296 and 5297 of 2002.

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
BHAGWANJIBHAI T DHOLAKIA

Appearance:
MR ASHISH M DAGLI for Appellants
MR HARSHAD PATEL FOR MR PANKAJ R DESAI for Respondent

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/04/2005

COMMON ORAL JUDGEMENT

1. Instant batch of three appeals under Section 100 of the Code of Civil Procedure ('the Code' for short) is

directed against the judgment and decree of even dated 13.12.2001 rendered in three separate Regular Civil Appeal Nos.41 of 1995, 44 of 1995 and 45 of 1995 by the learned Joint District Judge, Rajkot by which the appeals filed by the appellants came to be dismissed and thereby the judgment and decree of even dated 29.4.1995 recorded in Regular Civil Suit Nos.3153 of 1994, 3116 of 1994 and 3115 of 1994 by the learned 3rd Joint Civil Judge (S.D.)., Rajkot decreeing the suits filed by the respondent against the appellants for declaration and injunction came to be affirmed.

2. Since common question of law and facts are involved in this batch of appeals and the appellants and respondent are also common, with the consent of the learned advocates appearing for the parties, all these three appeals are heard together and decided by this common judgment.

3. FACTUAL MATRIX

Second Appeal No. 93 of 2002

(i) On 10.1.1992, the respondent was on duty in S.T. bus on Savarkundla - Gondal route. The said bus was checked by the checking squad and it was found that since one year from three passengers, for some oblique purpose and with an intention of defalcation of public money, ticket was not issued to them and fare was also not collected. Similarly, to one passenger travelling from Devgam to Devalia to whom till the checking place, the ticket was not issued for some oblique motive and with an intention of defalcation of public money. Departmental inquiry was initiated and statement of the respondent was recorded. Over and above that the statements of the passengers were also recorded. The inquiry was held following principles of natural justice. By the administrative order No.80/28 the competent authority was pleased to impose punishment of stoppage of two annual increments with permanent effect against which the statutory departmental appeal was preferred being Appeal No.117/92 by the respondent. The reviewing authority found that the punishment imposed by the competent authority was disproportionate to the nature of misconduct and reviewing authority was pleased to issue review show cause notice which was replied and thereafter by order dated 6.9.1994 the reviewing authority was pleased to impose the punishment of stoppage of three annual increments with permanent effect. The said order of the reviewing authority was subject matter of challenge in Regular Civil Suit No.3153 of 1994 which

came to be decreed on 29.4.1995. The appellants carried the matter to the District Court by filing Regular Civil Appeal No.41 of 1995 which came to be dismissed on 13.12.2001 which has given rise to Second Appeal No.93 of 2002.

Second Appeal No.94 of 2002

(ii) On 28.11.1992 the respondent was on duty as a conductor in the ST bus on Gondal - Savarkundla route. The bus was checked by the checking squad and it was found that from two passengers of one group travelling from Vasavad to Randel the respondent had collected fare in advance but till checking place ticket was not issued. Default Case No.318/15 was registered against him and inquiry was held following principles of natural justice and the charge sheet was issued. The respondent replied to the charge-sheet and thereafter by administrative order No.67/17 the competent authority imposed punishment of stoppage of annual increment with permanent effect for two years. Aggrieved by this order the respondent preferred statutory departmental First Appeal No.97 of 1993 which came to be rejected. Against this order the respondent filed Regular Civil suit No.3116 of 1994 and the said suit was decreed on 29.4.1995. Aggrieved by the decree passed by the trial court, the appellants preferred Regular Civil Appeal No.44 of 1995 which came to be dismissed vide order dated 13.12.2001 which has given rise to Second Appeal No. 94 of 2002.

Second Appeal No.95 of 2002

(iii) On 15.5.1994 the respondent was on duty as conductor in the ST bus on Gondal - Savarkundla route. When the checking squad checked the bus it was found that one passenger travelling from Mota Devalia to Mota Anku from whom fare was collected in advance but ticket was not issued till the checking place. Default case was registered against the respondent and departmental inquiry was held following principles of natural justice. Statement of the passenger was recorded and charge sheet was issued. The respondent replied to the charge sheet and thereafter the competent authority was pleased to impose punishment of stoppage of one annual increment with permanent effect. The order of the competent authority was subject matter of challenge in Regular Civil Suit No.3115 of 1994. The said suit came to be decreed on 29.4.2001. The appellants preferred Regular Civil Appeal No.45 of 1995. The appeal came to be dismissed vide order dated 13.12.2001 which has given rise to Second Appeal No.95 of 2002.

4. All these three appeals were listed for admission hearing and this Court (Coram: K.M. Mehta, J.) vide order dated 23.8.2002 admitted all these appeals. In the Civil Applications filed by the appellants for interim relief, stay of the impugned judgment and decree was granted.

5. It may be noted that in view of the statutory provisions contained under section 100 of the Code, substantial question of law were required to be formulated at the time of admission of the appeal, but in instant batch of appeals, through inadvertence the learned Single Judge has not formulated the substantial questions of law. Therefore now this Court deems it expedient to formulate the substantial questions of law.

6. According to this Court, the following are the substantial questions of law involved in these appeals:

(1) Whether the Civil Court and the appellate court had jurisdiction to entertain this dispute when the remedy is provided by the provisions of the Industrial Disputes Act?

(2) Whether the Civil Court can sit over the judgment of the departmental authority as regards punishment and undertake the task of reappreciate the evidence?

7. Mr. Ashish Dagli, learned advocate of the appellants, has contended that the impugned judgment and decree passed by the learned trial Judge is absolutely unjust, illegal, erroneous, without application of mind and against the settled principles of law as laid down by the Apex Court. It is also asserted by him that in view of the recent ruling of the Supreme Court that in such cases remedy is to approach the forum created under the Industrial Disputes Act ('the Act' for short) i.e., Industrial Tribunal and that the jurisdiction of the Civil Court is impliedly barred. It is also pointed out by him that the learned trial Judge proceeded to reappreciate and reevaluate the departmental proceedings. According to him, Civil Court cannot sit over as appellate authority in the departmental proceedings on the finding of the departmental authority. The Civil Court has very limited power to exercise its jurisdiction where departmental proceedings are challenged before the Court. According to him, the order of the learned trial

Judge decreeing the suits filed by the respondent declaring that the orders of the competent authority/reviewing authority were illegal, ineffective, excessive and void deserves to be quashed and set aside and also the order of the learned Joint District Judge in appeals affirming the said order is also absolutely erroneous which is required to be quashed and set aide and therefore the impugned judgment and decree deserves to be quashed and set aside by allowing these appeals and thereby dismissing the suits filed by the respondent and upholding and restoring the orders of penalty passed by the departmental authority against the respondent.

8. In counter submission, Mr. Harshad Patel, learned advocate on behalf of Mr. Pankaj Desai, learned advocate for the respondent, has contended that the impugned judgment and decree passed by the learned trial Judge which has been affirmed by the learned Joint District Judge does not call for any interference of this Court as according to him there is no substantial of law involved in these appeals and therefore he urged to dismiss the appeals. Alternatively he has also contended that since the Civil Court had no jurisdiction when the remedy is provided by the provisions of Act, liberty may be reserved in favour of the respondent to approach the Industrial Tribunal.

9. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the impugned judgment and decree one which is passed by the learned trial Judge and the second one passed by the learned Joint District Judge by which the judgment and decree passed by the learned trial Judge came to be affirmed, the set of evidence, copies whereof are supplied by the learned advocates appearing for the parties during the course of their submissions and the judgments cited at the bar.

10. At the outset it may be noted that against the respondent three departmental proceedings were initiated wherein the charge was defalcation of public money i.e., either for not issuing tickets to passengers after collecting fare from them or for not issuing tickets and not collecting fare from some passengers. In departmental proceedings he was found guilty and therefore punishment of stoppage of increments were imposed in three separate and independent inquiries. There is a reason to believe that the respondent is in the habit of misappropriating government money by not collecting fare and not issuing tickets to passengers and therefore on the aforesaid factual backdrop of the case,

let us examine the first substantial question of law, i.e., whether the Civil court had jurisdiction to entertain the dispute when the remedy is provided under the provisions of the Act.

11. In the case of Rajasthan State Road Transport Corporation and another v. Krishna Kant reported in AIR 1995 SC 1715, the Supreme court has laid down the following principle:

> "(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an 'Industrial Dispute' within the meaning of Section 2 (k) or Section 2-A of the Industrial Disputes Act, 1947.
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> (2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act."

12. Applying the principle laid down by he Supreme Court in the above referred to judgment to the facts of the present case, there is no dispute that in the instant case the dispute does not involve any general law of contract and it only arises out of the right or obligations created by the Act. It cannot be disputed that the controversy in the present case does not center around any general law of contract as it only arises out of the right or obligations created by the Act. Therefore, according to this Court, the courts below have wrongly exercised jurisdiction. This Court is of the considered opinion that in such cases Civil Courts do not have any jurisdiction. The remedy for the respondent was only to approach the Industrial Tribunal under the Act. Therefore, the first substantial question of law is required to be answered in favour of the appellants and against the respondent by holding that the Civil Court had no jurisdiction and the Industrial Tribunal alone had jurisdiction to entertain the said dispute.

13. Now this takes me to answer to the second substantial question of law formulated by this court. According to the appellants, Civil Court cannot sit over the judgment of the departmental appeal and undertake the

task of reappreciating the evidence, In this connection, it is advantageous to refer to the judgment of the Supreme Court in the case of R.C. Sharma v. The Union of India, AIR 1976 SC 2037 wherein it is specifically laid down that a suit challenging the validity of the departmental proceedings cannot be treated as an appeal from the findings in the departmental proceedings or the punishment inflicted upon the Government servant even if these are erroneous. A question which could affect the result in a civil suit has to be of such a nature that it goes to the root of the jurisdiction and the conduct of the departmental trial and vitiate the result. It is only if the departmental proceedings are null and void that a plaintiff in such a suit could obtain the reliefs he had asked for.

14. At this stage it is as advantageous to refer to the latest judgment of the Supreme Court in the case of Damoh Panna Sagar Rural Regional Bank and another v. Munna Lal Jain, 2005 AIR SCW 95 wherein the Supreme Court has held as under:

> "The Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. Unless the punishment imposed by the Disciplinary Authority or the appellate authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the appellate authority to reconsider the penalty imposed."

15. Applying the principles laid down by the Supreme Court in the above referred to judgments to the facts of the present case, there is no manner of doubt that the Civil Court cannot sit over appeal over the result of the departmental proceedings and decide its legality and validity unless the proceedings are shown to be null and void and unless the punishment imposed by the disciplinary authority has shocked the conscience of the Court, there is no scope for interference. In instant case, Mr. Harshad Patel, learned advocate of the respondent, is unable to demonstrate how the proceedings

against him were null and void and how the punishment of stoppage of increments in three departmental inquiries imposed on him was disproportionate to the charge proved against him. On the contrary, there is evidence that the respondent is in the habit of collecting fare illegally without issuing tickets or allowing passengers to travel in the bus without collecting fare and without issuing tickets and thereby misappropriating Government fund which cannot be leniently viewed. It has also come in evidence that the respondent conductor is in the habit of collecting fare illegally against whom in all 21 default cases were registered and in almost all cases different punishments were imposed on him.

16. This Court finds that the basic premise of decreeing the suit filed by the respondent was incorrect. It was the primary duty of the conductor to realize fare and not depositing the fare with the transport Corporation cannot be taken lightly. This is so held by the Supreme Court in the case of State of Haryana and another v. Rattan Singh AIR 1977 SC 1512 and in Karnataka State Road Transport Corporation v. B.S. Hullikatti (2001) 2 SCC 574.

17. In view of the aforesaid discussion, the second substantial question of law is also required to be answered in favour of the appellants and against the respondent by holding that the Civil Court cannot sit over the judgment of the departmental authority as regards the punishment and undertake the task of reappreciating the evidence.

18. In aforesaid view of the matter, the impugned judgment and decree passed by the learned trial Judge decreeing the three suits filed by the respondent and the judgment and decree passed by the learned Joint District Judge affirming the said judgment and decree in three appeals are required to be quashed and set aside and as a consequence thereof the three suits filed by the respondent deserve to be dismissed.

19. For the foregoing reasons, all the three appeals are allowed with no order as to costs. Resultantly, the impugned judgment and decree of even dated 29.4.1995 rendered in Regular Civil Suit Nos.3153 of 1994, 3116 of 1994 and 3115 of 1994 by the learned Civil Judge (SD), Rajkot decreeing the suits filed by the respondent as well as the judgment and decree of even dated 13.12.2001 rendered in Regular Civil Appeal Nos. 41 of 1995, 44 of 1995 and 45 of 1995 by the learned Joint District Judge, Rajkot dismissing the said appeals filed by the

appellants and thereby confirming the judgment and decree passed by the learned trial Judge are hereby quashed and set aside and the three Regular Civil Suit Nos. 3153 of 1994, 3116 of 1994 and 3115 of 1994 filed by the respondent against the appellants are hereby dismissed with no order as to costs. Resultantly the three separate orders of penalty of stoppage of increments passed by the competent authority/reviewing authority in three separate departmental proceedings against the respondent are hereby confirmed and restored.

20. Since all the appeals are allowed, Civil Applications which are filed for stay of the impugned judgment and decree do not assume any survival value and hence the same are disposed of with no order as to costs. Interim relief granted earlier in each civil application shall stand vacated.

(A.M. Kapadia, J.)

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